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August 2, 2019

The Honorable Cheryl Stanton
Administrator
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Administrator Stanton:

It was a pleasure meeting with you on July 16, 2019. Thank you for sharing your vision for the Department of Labor's Wage and Hour Division (WHD). I write to inquire into the WHD's efforts to address the troubling trend of wage and hour violations in the senior residential care industry.¹

As you know, the Fair Labor Standards Act (FLSA) provides minimum wage and overtime protections for most workers. However, it exempts workers who provide companionship services to elderly persons and live-in domestic service workers from overtime protections. In 2015, WHD updated its regulations to include many direct care workers, such as certified nursing assistants and home health aides, in the FLSA's minimum wage and overtime protections. Live-in domestic workers remain exempt from the FLSA's overtime requirements; however, they are not exempt from the law's requirement to be paid at least the federal minimum wage for all hours worked.

Yet even with these statutory and regulatory requirements, WHD's enforcement of the FLSA appears to be failing many eldercare workers. A recent investigative report by the Center for Investigative Reporting (CIR) revealed that an alarming number of workers in the senior residential care industry earn wages that are effectively well below the federal minimum wage

¹ In this letter I refer to residential care facilities that predominantly serve the elderly and people with disabilities that fall under the following North American Industry Classification System (NAICS) codes: 6233, 62331, 623311, and 623312.

and overtime-eligible workers are not compensated for overtime hours worked.² The CIR report found that some workers in senior residential care facilities were paid as little as \$2 or \$3.50 an hour.³ The report also found systemic violations of the FLSA's overtime requirements, including cases in which certain overtime eligible caregivers were required to work around-the-clock shifts with no overtime pay.⁴

In order to better understand what WHD is doing to protect these vulnerable workers, I request the following information and documents:

1. WHD currently enforces numerous laws with fewer than 900 investigators.⁵ In its Fiscal Year 2020 budget request WHD stated, "WHD prioritizes resources by using an evidence-based, multi-pronged approach to improve compliance which includes delivering compliance assistance to employers, conducting investigations in high-violation industries..."⁶ Please provide a detailed explanation of the strategic enforcement that WHD engages in to target high-violation industries, including whether the senior residential care industry is one of them.
2. For the past ten years, please provide the number of cases brought by WHD each year against senior residential care facilities. Please also include the number of currently pending cases.
3. The CIR report also detailed how senior residential care facilities found to be liable for backpay and damages often used bankruptcy to avoid the legal consequence of wage theft and the obligation to fully make their workers whole.⁷ Please provide a detailed explanation of what WHD is doing, including working with state entities, to ensure that senior residential care facility operators found to have engaged in wage and hour violations are prevented from using the guise of bankruptcy to shirk their obligations to make their workers whole.

²Jennifer Gollan, *Elder Care Homes Rake In Profits As Legions Of Workers Earn A Pittance For Long Hours Of Care*, Reveal from The Center for Investigative Reporting (May 19, 2019), <https://www.revealnews.org/article/caregivers/>.

³ *Id.*

⁴ *Id.*

⁵ By contrast, in the 1940s, WHD had 1,000 investigators when it was charged with protecting just one-seventh the size of today's workforce. See *Behind the Minimum Wage Fight, A Sweeping Failure To Enforce The Law*, POLITICO (Feb. 18, 2018), <https://www.politico.com/story/2018/02/18/minimum-wage-not-enforced-investigation-409644>.

⁶ *FY 2020 Congressional Budget Justification*, Department of Labor Wage and Hour Division, <https://www.dol.gov/sites/dolgov/files/general/budget/2020/CBJ-2020-V2-09.pdf>.

⁷ Jennifer Gollan, *Elder Care Homes Rake In Profits As Legions Of Workers Earn A Pittance For Long Hours Of Care*, Reveal from The Center for Investigative Reporting (May 19, 2019), <https://www.revealnews.org/article/caregivers/>.

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Thank you for your attention to this request. Please provide the requested information and documents as soon as possible, but no later than August 16, 2019. I also request a briefing on these matters after the above information and documents have been produced.

If you have any questions, please contact Eunice Ikene at eunice.ikene@mail.house.gov and Cathy Yu at cathy.yu@mail.house.gov. Please direct all official correspondence to the Committee's Chief Clerk at Tylease.Fitzgerald@mail.house.gov. Thank you for your attention to this matter, and I look forward to your response.

Sincerely,



Robert C. "Bobby" Scott
Chairman